

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

DAVID OPPENHEIMER,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No.:
	:	
SUPERSTAR TICKETS, INC.,	:	COMPLAINT AND JURY
	:	DEMAND
Defendant.	:	
	:	
	:	

COMPLAINT FOR COPYRIGHT INFRINGEMENT

Plaintiff, DAVID OPPENHEIMER (“Oppenheimer” or “Plaintiff”), brings this complaint in the United States District Court for the Eastern District of Virginia against SUPERSTAR TICKETS, INC. (“Superstar” or “Defendant”), alleging as follows:

PARTIES

1. Plaintiff is an experienced live concert, travel, and aerial photographer with twenty-one (21) years experience in the field of commercial photography. A partial list of Plaintiff’s clients includes: Rolling Stone, MSNBC, Fuse, MTV, and AOL. Plaintiff resides in Asheville, North Carolina.
2. On information and belief, Defendant is a Corporation existing under the laws of the Commonwealth of Virginia, with headquarters in Arlington, Virginia. Defendant owns, operates, and is solely responsible for the content on its commercial website, www.superstar.com.

JURISDICTION AND VENUE

3. This is a civil action seeking damages for copyright infringement under the copyright laws of the United States (17 U.S.C. § 101 et seq.).
4. This Court has jurisdiction under 17 U.S.C. § 101 et seq.; 28 U.S.C. § 1331 (federal question); and 28 U.S.C. § 1338(a) (copyright).
5. This Court has personal jurisdiction over Defendant, and venue in this District is proper under 28 U.S.C. § 1391(b), in that the events giving rise to the claims occurred in this district, Defendant engaged in infringement in this district, Defendant resides in this district, and Defendant is subject to personal jurisdiction in this district.
6. This Court also has personal jurisdiction over Defendant, and venue in this District is proper under 28 U.S.C. § 1400(a).

FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

7. Plaintiff captured the photograph, “NASCAR_2_Bristol_OPP4093.jpg” (“Copyrighted Photograph”) on March 17, 2013. [Exhibit 1]. Plaintiff captured Copyrighted Photograph using great technical skill and careful timing, as well as significant time and energy.
8. Plaintiff registered Copyrighted Photograph with the United States Copyright Office on April 9, 2013 (Registration No.: VA 1-136-802). [Exhibit 2].
9. On or about April 3, 2014, Plaintiff posted Copyrighted Photograph to www.performanceimpressions.com (Last visited August 1, 2019). [Exhibit 3].
10. Plaintiff embedded Copyright Photograph with extensive metadata, including a copyright notice and language warning against copying Copyright Photograph without license or permission from Plaintiff. [Exhibit 4].

11. Beginning on or about May 1, 2017, Defendant copied, uploaded, then posted Copyrighted Photograph, including Plaintiff's copyright notice, to Defendant's commercial website, www.superstar.com/media/performers/banners/Food_City_500.jpg (Last visited August 1, 2019) [Exhibit 5].
12. Beginning on or about May 1, 2017, Defendant posted a cropped version of Copyrighted Photograph to the Defendant's commercial website, www.superstar.com (Last visited April 1, 2019) [Exhibit 6].
13. Defendant used Copyrighted Photograph as a full-page banner image to advertise tickets for the NASCAR Sprint Cup Series: Food City 500 held at the Bristol Motor Speedway in Bristol, Tennessee. [Exhibit 6].
14. Defendant cropped out Plaintiff's clear and unambiguous name and copyright notice before posting Copyright Photograph to Defendant's commercial website, www.superstar.com. [Exhibit 6].
15. Defendant copied and used Copyrighted Photograph without license or permission from Plaintiff.
16. As of the date of this filing, despite numerous warnings by Plaintiff, Defendant has failed to remove the uncropped version of Copyrighted Photograph from Defendant's commercial website.

COUNT I: INFRINGEMENT OF COPYRIGHT PURSUANT TO 17 U.S.C. § 101 ET SEQ.

17. Plaintiff incorporates herein by this reference each and every allegation contained in each paragraph above.
18. Plaintiff is, and at all relevant times has been, the copyright owner or licensee of exclusive rights under United States copyright with respect to Copyrighted Photograph, which is the

subject of a valid and complete Certificate of Copyright Registration by the Register of Copyrights.

19. Among the exclusive rights granted to each Plaintiff under the Copyright Act are the exclusive rights to reproduce and distribute the Copyrighted Photograph to the public.
20. Plaintiff is informed and believes Defendant, without the permission or consent of Plaintiff, copied and used Copyrighted Photograph on Defendant's commercial website, www.superstar.com. In doing so, Defendant violated Plaintiff's exclusive rights of reproduction and distribution. Defendant's actions constitute infringement of Plaintiff's copyright and exclusive rights under copyright.
21. Plaintiff is informed and believes that the foregoing act of infringement was willful and intentional, in disregard of and with indifference to the rights of Plaintiff.
22. As a result of Defendant's infringement of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to actual or statutory damages, including any profits realized by Defendant attributable to the infringement, pursuant to 17 U.S.C. § 504 for Defendant's infringement of Copyrighted Photograph.

COUNT II: REMOVAL AND ALTERATION OF INTEGRITY OF COPYRIGHT MANAGEMENT INFORMATION PURSUANT TO 17 U.S.C. § 1202

23. Plaintiff is informed and believes that Defendant, without the permission or consent of Plaintiff, knowingly and with the intent to conceal infringement, intentionally removed the copyright management information from Plaintiff's Copyrighted Photograph before displaying Copyrighted Photograph on Defendant's public and commercial website, www.superstar.com. In doing so, Defendant violated 17 U.S.C. § 1202(a)(1) and (b)(1).

24. As a result of Defendant's actions, Plaintiff is entitled to actual or statutory damages pursuant to 17 U.S.C. § 1203(c). Plaintiff is further entitled to their attorney's fees and costs pursuant to 17 U.S.C. § 1203(b)(5).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

- A. Declaring that Defendant's unauthorized conduct violates Plaintiff's rights under the Federal Copyright Act;
- B. Immediately and permanently enjoining Defendant, its officers, directors, agents, servants, employees, representatives, attorneys, related companies, successors, assigns, and all others in active concert or participation with them from copying and republishing Plaintiff's Copyrighted Photograph without consent or otherwise infringing Plaintiff's copyright or other rights in any manner;
- C. Ordering Defendant to account to Plaintiff for all gains, profits, and advantages derived by Defendant by their infringement of Plaintiff's copyright or such damages as are proper, and since Defendant intentionally infringed Plaintiff's copyright, for the maximum allowable statutory damages for each violation;
- D. Awarding Plaintiff actual and/or statutory damages for Defendant's copyright infringement in an amount to be determined at trial;
- E. Awarding Plaintiff his costs, reasonable attorney's fees, and disbursements in this action, pursuant to 17 U.S.C. § 505, 17 U.S.C. § 1203(b)(3), and § 1203(b)(5); and
- F. Awarding Plaintiff such other and further relief as is just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all claims for which there is a right to jury trial.

Dated: August 9, 2019

/s/ *David C. Deal*

David C. Deal (VA Bar No.: 86005)
The Law Office of David C. Deal, P.L.C.
P.O. Box 1042
Crozet, VA 22932
434-233-2727, Telephone
david@daviddeal.com
Counsel for Plaintiff

EXHIBIT 1



EXHIBIT 2

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Maria A. Pallante

Register of Copyrights, United States of America

Registration Number
VAu 1-136-802

Effective date of
registration:
April 9, 2013

Title _____

Title of Work: 2013 Events Photographed by David Gordon Oppenheimer

Completion/Publication _____

Year of Completion: 2013

Author _____

■ Author: David Gordon Oppenheimer

Author Created: photograph(s)

Work made for hire: No

Citizen of: United States

Domiciled in: United States

Year Born: 1970

Copyright claimant _____

Copyright Claimant: David Gordon Oppenheimer

P.O. Box 8105, Asheville, NC, 28814, United States

Rights and Permissions _____

Organization Name: Performance Impressions LLC

Name: David Gordon Oppenheimer

Email: dave@performanceimpressions.com

Telephone: 828-273-9339

Address: P.O. Box 8105

Asheville, NC 28814 United States

Certification _____

Name: David Gordon Oppenheimer

Date: April 9, 2013

EXHIBIT 3

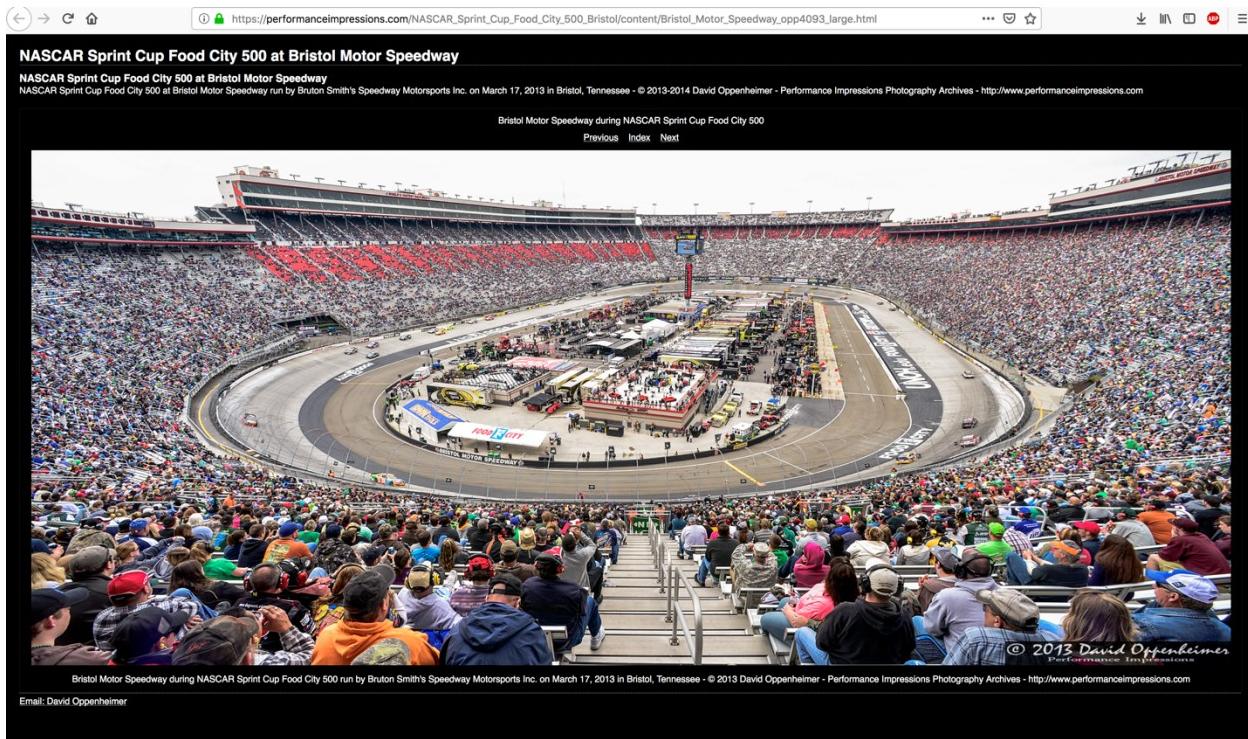


EXHIBIT 4

File Name	Food_City_500.jpg
File Size	3.3 MB
File Type	JPEG
File Type Extension	jpg
Mime Type	Image/jpeg
Exif Byte Order	Little-endian (Intel, II)
Image Description	Bristol Motor Speedway during NASCAR Sprint Cup Food City 500 run by Bruton Smith's Speedway Motorsports Inc. on March 17, 2013 in Bristol, Tennessee - © 2013 David Oppenheimer - Performance Impressions Photography Archives - http://www.performanceimpressions.com
Make	NIKON CORPORATION
Model	NIKON D4
Orientation	Horizontal (normal)
X Resolution	240
Y Resolution	240
Resolution Unit	inches
Software	Adobe Photoshop CS6 (Windows)
Modify Date	2013:03:13 16:52:59
Artist	David Oppenheimer
Copyright	© 2013 David Oppenheimer
Exposure Time	1/400
F Number	9
Exposure Program	Manual
Iso	640
Sensitivity Type	Recommended Exposure Index
Exif Version	2.30
Date Time Original	2013:03:17 15:26:23
Create Date	2013:03:17 15:26:23
Shutter Speed Value	1/400
Aperture Value	9
Exposure Compensation	0
Max Aperture Value	2.8
Metering Mode	Center-weighted average
Light Source	Unknown
Flash	No Flash
Focal Length	14.0 mm
Sub Sec Time Original	50
Sub Sec Time Digitized	50
Color Space	Uncalibrated
Exif Image Width	2500
Exif Image Height	1073
Sensing Method	One-chip color area
File Source	Digital Camera
Scene Type	Directly photographed
Cfa Pattern	[Red,Green][Green,Blue]
Custom Rendered	Normal
Exposure Mode	Manual
White Balance	Auto
Digital Zoom Ratio	1
Focal Length In 35Mm Format	14 mm
Scene Capture Type	Standard
Gain Control	Low gain up
Contrast	Normal
Saturation	Normal
Sharpness	Normal
Subject Distance Range	Unknown
Serial Number	2019007
Lens Info	14mm f/2.8
Lens Model	14.0 mm f/2.8
Compression	JPEG (old-style)
Thumbnail Offset	1306
Thumbnail Length	6380
Current Iptc Digest	5c153bae2673c74ea7170e58159a9f1
Coded Character Set	UTF8
Application Record Version	4
Caption- Abstract	Bristol Motor Speedway during NASCAR Sprint Cup Food City 500 run by Bruton Smith's Speedway Motorsports Inc. on March 17, 2013 in Bristol, Tennessee - © 2013 David Oppenheimer - Performance Impressions Photography Archives - http://www.performanceimpressions.com
Writer- Editor	David Oppenheimer
Special Instructions	No use permitted without a written license from David Oppenheimer or Performance Impressions LLC.
By-Line	David Oppenheimer
By-Line Title	Concert Photographer
Object Name	Bristol Motor Speedway during NASCAR Sprint Cup Food City 500
Time Created	15:26:23+00:00
Digital Creation Date	2013:03:17
Sub-Location	Bristol Motor Speedway
Province- State	Tennessee
Country- Primary Location Name	United States of America
Country- Primary Location Code	USA
Original Transmission Reference	NASCAR, Bristol Motor Speedway,
KEYWORDS	
0	NASCAR

1	Bristol Motor Speedway
2	Bristol
3	Sprint Cup Food City 500
4	Tennessee
5	race
6	race cars
7	stock cars
8	race track
9	racing
10	stadium
11	Sprint Cup
12	Food City 500
13	fast
14	Bruton Smith
15	Speedway Motorsports
16	speedway
17	motorsports
18	SMI
19	BMS
20	racerack
Copyright Notice	© 2013 David Oppenheimer
iptc Digest	5C153B86E2D73C74CA1F10E8A123A9F1
Displayed Units X	inches
Displayed Units Y	inches
Print Style	Centered
Print Position	0.0
Print Scale	1
Global Angle	30
Global Altitude	30
Copyright Flag	1
Url	http://www.performanceimpressions.com
URL LIST	
Slices Group Name	Bristol_Motor_Speedway_opp4093
Num Slices	1
Pixel Aspect Ratio	1
Photoshop Thumbnail	(Binary data 6580 bytes)
Has Real Merged Data	Yes
Writer Name	Adobe Photoshop
Reader Name	Adobe Photoshop CS6
Photoshop Quality	12
Photoshop Format	Standard
Progressive Scans	3 Scans
Xmp Toolkit	Adobe XMP Core 5.3-c011 56.145661, 2012/02/06-14:56:27
Creator Tool	Adobe Photoshop Camera Raw 7.1 (Windows)
Metadata Date	2013:05:13 16:52:59-04:00
Format	image/jpeg
Country	United States of America
Caption Writer	David Oppenheimer
Credit	David Oppenheimer
Date Created	2013:05:04 15:26:23:005
Color Mode	RGB
Icc Profile Name	Adobe RGB (1998)
Headline	Bristol Motor Speedway during NASCAR Sprint Cup Food City 500
Instructions	No use permitted without a written license from David Oppenheimer or Performance Impressions LLC
Authors Position	Portrait Photographer
City	Bristol
State	Tennessee
Transmission Reference	NASCAR, Bristol Motor Speedway, Bristol, Sprint Cup Food City 500, Tennessee, race, race cars, stock cars, race track, racing, stadium, Sprint Cup, Food City 500, fast, Bruton Smith, Speedway Motorsports, speedway, motorsports, SMI, BMS, racerack
Lens	14.0 mm f/2.8
Image Number	29357
Approximate Focus Distance	429467295
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Original Document Id	CDD7C63ADE540E285E4F209DAA3981A1
Instance Id	xmp:iid:B19B06430EBCE211A1CF32995D66E6D4
Raw File Name	_OPP4093.JPG
Version	7.1
Process Version	6.7
Incremental Temperature	6
Incremental Tint	13
Luminance Smoothing	0
Color Noise Reduction	0
Vignette Amount	0
Shadow Tint	0
Red Hue	0
Red Saturation	0
Green Hue	0
Green Saturation	0
Blue Hue	0
Blue Saturation	0
Vibrance	16
Hue Adjustment Red	0
Hue Adjustment Orange	0
Hue Adjustment Yellow	0
Hue Adjustment Green	0
Hue Adjustment Aqua	0
Hue Adjustment Blue	0
Hue Adjustment Purple	0
Hue Adjustment Magenta	0

18	SMI
19	BMS
20	racetrack
DOCUMENTANCESTORS	
0	xmp:did=32B80450E5AEE211ACC2B057FE 7D728E
1	xmp:did=8C58FD54CB8BE2118326CDB3AD 9F55BC
HISTORYACTION	
0	derived
1	saved
2	converted
3	saved
4	saved
5	converted
6	saved
HISTORYPARAMETERS	
0	converted from image/jpeg to image/vnd.adobe.photoshop; saved to new location
1	from image/vnd.adobe.photoshop to application/vnd.adobe.photoshop
2	from application/vnd.adobe.photoshop to image/jpeg
HISTORYINSTANCEID	
0	xmp:lid=70FF7D0715B8E211BAF4C36796D 419C2
1	xmp:lid=A9B06430EBCE211A1CFB2B95D 6E604
2	xmp:lid=B09B06430EBCE211A1CFB2B95D 6E604
3	xmp:lid=B19B06430EBCE211A1CFB2B95D 6E604
HISTORYWHEN	
0	2013.05.12 11:14:36-04:00
1	2013.05.13 16:52:23-04:00
2	2013.05.13 16:52:59-04:00
3	2013.05.13 16:52:59-04:00
HISTORYSOFTWAREAGENT	
0	Adobe Photoshop Camera Raw 7.1 (Windows)
1	Adobe Photoshop CS6 (Windows)
2	Adobe Photoshop CS6 (Windows)
3	Adobe Photoshop CS6 (Windows)
HISTORYCHANGED	
0	/
1	/
2	/
3	/
Derived From Instance Id	xmp:lid=70FF7D0715B8E211BAF4C36796D 419C2
Derived From Document Id	xmp:did=70FF7D0715B8E211BAF4C36796D 419C2
Derived From Original Document Id	CDD7C53ADE549E285E4F2690AA3981A1
TONECURVEPV2012	
0	0, 0
1	38, 53
2	98, 97
3	255, 255
TONECURVEPV2012RED	
0	0, 0
1	255, 255
TONECURVEPV2012GREEN	
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1	255, 255
TONECURVEPV2012BLUE	
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1	255, 255
Creator Address	P.O. Box 8105
Creator City	Asheville
Creator Region	North Carolina
Creator Postal Code	28814
Creator Country	United States
Creator Work Telephone	(828) 273-9339
Creator Work Email	dave@performanceimpressions.com
Creator Work Url	http://www.performanceimpressions.com
Usage Terms	All Rights Reserved - no use permitted without a written license from David Oppenheimer or Performance Impressions LLC
Profile Cmm Type	ADDE
Profile Version	2.1.0
Profile Class	Display Device Profile
Color Space Data	RGB
Profile Connection Space	XYZ
Profile Date Time	1995.05.03 00:00:00
Profile File Signature	acsp

EXHIBIT 5

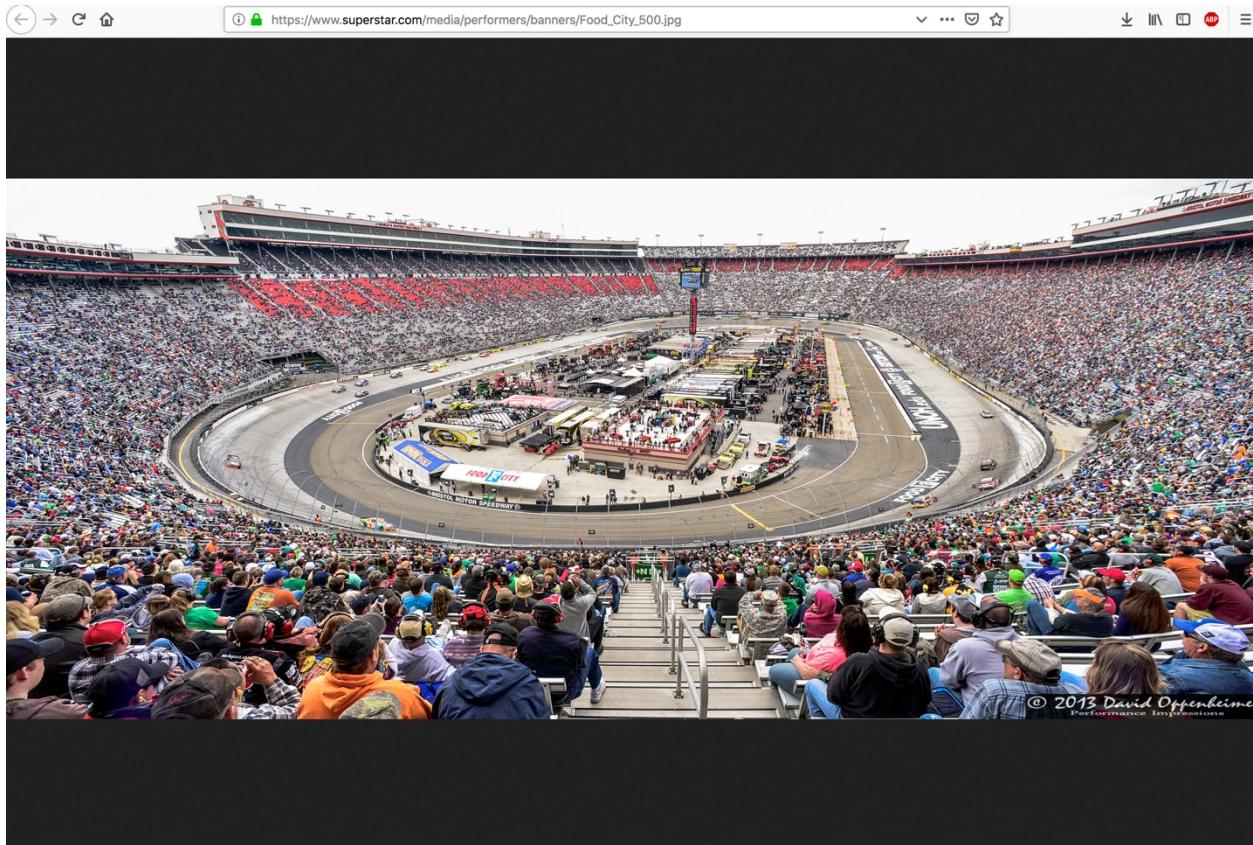


EXHIBIT 6

The screenshot shows the SuperStar.com website interface. At the top, there is a navigation bar with the SuperStar logo, a search bar, and links for Sports, Concerts, Theatre, Sign-up, and Sign In. Below the header is a large banner image of a crowded race track during a NASCAR race. Overlaid on the banner is the text "Food City 500 Tickets & Schedule".

Below the banner, there is a section titled "All Events" with a button for "SUN APR 23 2 PM". To the right of this button, it says "NASCAR Sprint Cup Series: Food City 500" and "Bristol Motor Speedway - Bristol, TN". A price indicator "from \$75.00" is shown. To the right of the event details are three filter buttons: "All Days" (selected), "Weekend", and "Weekday".

On the right side of the main content area, there is a "Top Picks" sidebar featuring links to various events: New York Knicks, Monster Jam, Chicago Cubs, New York Yankees, Boston Red Sox, Miami Heat, WWE, San Francisco Giants, AMA Monster Energy Supercross, and AMA Supercross.

Below the "Top Picks" sidebar is a "Related Categories" section with buttons for "Sports", "Racing", and "NASCAR".

At the bottom right of the main content area is a "Purchase Guarantee" section with a shield icon. It includes a brief description: "Your next live event experience is in good hands, see how SuperStar.com protects fans and guarantees orders!" followed by a "Food City 500 Ticket Purchase Guarantee" section containing four numbered points about ticket arrival, authenticity, substitution, and a money-back guarantee.